

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification and Compensation	)	
Provisions of the Telecommunications Act of 1996	)	
	)	
<b>SURRY TELEPHONE</b>	)	CC Docket No. 96-128
<b>MEMBERSHIP CORPORATION</b>	)	
	)	
Petition for Waiver of Sections 64.1301(a), 64.1301(d)	)	
and Section 64.1301(e) of the Commission's Rules	)	

To: Chief, Wireline Competition Bureau

**PETITION FOR WAIVER**

Surry Telephone Membership Corporation ("Surry Telephone" or "Surry"), pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") rules<sup>1</sup>, hereby requests a waiver of Sections 64.1301(a), 64.1301(d) and 64.1301(e) of the Commission's rules<sup>2</sup> to exclude Surry Telephone from the requirement to pay default compensation to payphone service providers ("PSPs"). Because Surry Telephone is an Incumbent Local Exchange Carrier ("ILEC"), Surry is included among the universal group of ILECs subject to Section 64.1301 by listings of ILECs in Appendices A, B and C of the Commission's *Fifth Reconsideration Order* in CC Docket No. 96-128.<sup>3</sup> As a result, Surry is

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. §§ 64.1301(a), 64.1301(d) and 64.1301(e).

<sup>3</sup> *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FIFTH RECONSIDERATION ORDER ON RECONSIDERATION AND ORDER ON REMAND*, 17 FCC Rcd 21274, FCC 02-292, CC Docket No. 96-128, released October 23, 2002, ("Fifth Reconsideration Order").

subject to the requirement to pay default compensation to payphone providers for compensable calls.<sup>4</sup> Because Surry does not carry compensable calls, Surry respectfully requests that the Commission waive the requirement under Sections 64.1301(a), 64.1301(d) and 64.1301(e) of the Commission's Rules for Surry to make default payments to payphone service providers ("PSPs").

Surry Telephone is an ILEC serving approximately 16,000 rural customers in the state of North Carolina. On August 29, 2003, Surry received a memorandum and invoice from APCC Services. Said memorandum and invoice indicate that Surry Telephone owes an amount of \$2,061.70 to a large number of PSPs.

1. **A key determination by Commission regarding compensable calls is that an ILEC must carry a call in order to be responsible for payment.**

The *Fifth Reconsideration Order* was intended to bring a "measure of finality" regarding the contentious history of payphone compensation. One purpose of the Commission's action was to ensure that PSPs receive fair compensation for every call made using their payphones. The Commission has concluded that Section 276 requires it to "ensure that per-call compensation is fair, which implies fairness to both sides."<sup>5</sup>

A fundamental purpose of the Commission's rules regarding payphone compensation was to ensure that local exchange carriers ("LECs") "pay payphone compensation to the extent that

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<sup>4</sup> A compensable call is a call from a payphone user who calls a toll-free number, dials an access code, or uses a pre-paid calling card without placing any money into the payphone. *Fifth Reconsideration Order* at 3.

<sup>5</sup> *Fifth Reconsideration Order* at 82.

they handle compensable payphone calls.”<sup>6</sup> This is a threshold criterion that must be satisfied prior to placing a burden for PSP payment on any LEC. Absent satisfying this threshold criterion, a carrier would be responsible to pay for a compensable call that it did not handle. Clearly such result would not be a fair result for any LEC.

The Commission explained how a LEC can handle compensable communications:<sup>7</sup>

- a. When a LEC terminates a compensable call that is both originated within its own service territory and not routed to another carrier for completion,
  - b. When a LEC also provides interexchange service and carries the call as would any other IXC.
2. **The Commission’s default payphone compensation regime for ILECs is based exclusively on RBOC data that does not reflect Surry Telephone’s lack of compensable calls.**

Based on at least two data requests initiated by the Commission and directed solely to the Regional Bell Operating Companies (“RBOCs”), the Commission determined that ILECs complete payphone calls that are not routed to other carriers. The RBOC data apparently shows that 2.19 percent of all compensable payphone calls are handled by the RBOCs. The Commission also noted that no other ILEC objected to this data. The Commission concluded that it is appropriate to allocate to “both RBOC and non-RBOC incumbent LECs a percentage of the calls (2.19%) originating from payphones within their own service territories.”<sup>8</sup> Surry

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<sup>6</sup> *Fifth Reconsideration Order*, at 55 (Emphasis supplied).

<sup>7</sup> *Id.*, at 55.

<sup>8</sup> *Id.*, at 56.

Telephone did not have cause to object to this data because clearly the Commission was directing its efforts at determining the percentage for “carriers” – those entities who carry compensable communications. As will be shown below, Surry does not carry any compensable calls. Thus the application of the allocation percentage in the case of Surry is inappropriate.

**3. Surry Telephone never carries compensable calls.**

A compensable call is a call from a payphone user who calls a toll-free number, dials an access code, or uses a pre-paid calling card without placing any money into the payphone.<sup>9</sup> Because of its operation as an access provider, Surry Telephone does not carry any compensable communications. Surry’s limited intraLATA toll service does not include any mechanisms for use of access codes or dial-around codes at payphones, thus Surry does not carry any compensable calls. Attached to this petition is a Declaration of Michael W. Stanley, Surry’s General Manager that confirms that Surry Telephone never carries compensable calls. All compensable calls originating from payphones within the Surry service area are passed on to other carriers who pay interstate or intrastate, as the case may be, originating access charges. Any compensable calls terminated by Surry within its service area are received from other carriers who pay interstate or intrastate, as the case may be, terminating access charges. Thus, Surry Telephone does not carry individual compensable calls that both originate and terminate within Surry’s LEC service area or are carried by Surry as an IXC that are subject to compensation under the criteria established in the *Fifth Reconsideration Order* for either a LEC

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<sup>9</sup> *Id.*, at 3.

or an IXC.<sup>10</sup> Any compensable call terminating in Surry's service area would have to be an IXC-carried call.<sup>11</sup> Because Surry handles no compensable calls, any rule that requires Surry to pay for compensable calls is not a fair compensation mechanism.

**4. The *Fifth Reconsideration Order* provides a mechanism for entities to be removed from the allocation percentage appendices.**

Appendices A, B and C of the *Fifth Reconsideration Order* list "carrier" allocation percentages for default compensation factors for, respectively, interim access code and subscriber 800 calls (November 7, 1996 through October 6, 1997), intermediate access code and subscriber 800 calls (October 7, 1997 through April 20, 1999) and post-intermediate access code and subscriber 800 calls (April 21, 1999 forward). In the *Fifth Reconsideration Order*, the Commission noted that entities listed on Appendices A, B, or C could file a petition for a waiver with the Wireline Competition Bureau – such as the instant waiver request – for exclusion from the Commission's allocation. Note 89 states:

... Any entity named in our allocation that then receives a request for per payphone compensation from a PSP or other entity may, within ninety (90) days of receiving such a request, file a waiver request with the Wireline Competition Bureau for exclusion from our allocation, with a demonstration that the entity provides no communications service to others.

As has been demonstrated above, while Surry Telephone provides communications services, it never provides compensable communications service to others and is a non-carrier as defined by

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<sup>10</sup> *Fifth Reconsideration Order*, at 55.

<sup>11</sup> Surry Telephone's affiliate, Surry Telephone Long Distance is an IXC providing long distance service as a reseller. Surry Telephone is included on Appendices A, B and C of the *Fifth Reconsideration Order*. As a carrier included on Appendices A, B and C, Surry Telephone Long Distance is not subject to default payphone compensation.

the *Fifth Reconsideration Order*.<sup>12</sup> Accordingly, Surry requests within 90 days of receipt of its only request for compensation, that from APCC, that it be removed from the Commission's allocation appendices.

**5. Surry Telephone's petition for waiver meets the Commission's standards for granting a waiver of its rules.**

Under Section 1.3 of the Commission's Rules, any provision of the rules may be waived if "good cause" is shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.<sup>13</sup> Payment of payphone compensation by Surry Telephone absent compensable calls that both originate and terminate within Surry's network, whereby Surry does not collect any revenue for the call, apart from revenue under the applicable interstate or intrastate access charge regime, would be inconsistent with the public interest. Additionally, payment of compensation under such circumstances would undermine the policy that entities benefiting from the carrying of compensable payphone originating calls should pay compensation to payphone providers. Moreover, it would be burdensome and inequitable for Surry and, in turn, its customers to bear the cost of default payment compensation when Surry carries no compensable calls.<sup>14</sup>

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<sup>12</sup> *Fifth Reconsideration Order*, Note 3.

<sup>13</sup> *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("WAIT Radio"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).


<sup>14</sup> *See Wait Radio*, 418 F.2d at 1159. The petitioner must demonstrate, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.

**Conclusion**

For the foregoing reasons, Surry Telephone respectfully requests that the Commission waive Sections 64.1301(a), 64.1301(d) and 64.1301(e) and thereby not include Surry among the entities listed on Appendices A, B and C of the *Fifth Reconsideration Order* required to pay default compensation to payphone service providers. The requested waiver will serve the public interest by allowing Surry to avoid payment of charges for which no related benefit accrues to Surry given that Surry does not carry payphone originated compensable calls.

Respectfully submitted,

**SURRY TELEPHONE  
MEMBERSHIP CORPORATION**

By:   
Michael W. Stanley  
General Manager

Surry Telephone Membership Corporation  
P.O. Box 385  
Dobson, North Carolina 27017  
336-374-5021

November 26, 2003

**NORTH CAROLINA**

**Surry County**



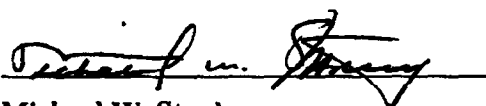
**Declaration**

I, Michael W. Stanley, hereby state and declare:

1. I am General Manager of Surry Telephone Membership Corporation, Dobson, North Carolina ("Surry Telephone").
2. Surry Telephone is an Incumbent Local Exchange Carrier (ILEC) serving rural areas of Surry and Stokes Counties in North Carolina with telephone service.
3. Surry Telephone's local switching network is designed and programmed not to allow access codes or dial-around codes for calls from payphones that originate and terminate in Surry Telephone's ILEC area.
4. I am familiar with the facts contained in the foregoing petition, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts that are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25 th day of November, 2003.



**Michael W. Stanley**

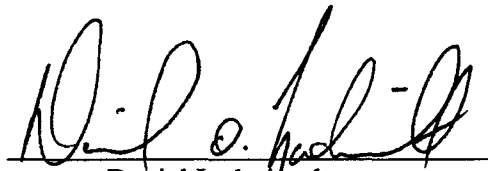


### **CERTIFICATE OF SERVICE**

I, Daniel Ladmirault, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19<sup>th</sup> Street, N.W., Suite 1200, Washington, D.C. 20036, do hereby certify that I have on this 26<sup>th</sup> day of November, 2003, sent by U.S. mail, first-class delivery, a copy of the foregoing Petition For Waiver to the following:

William Maher, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 5-C450  
Washington, D.C. 20554

Qualex International\*  
Portals II  
445 12th Street, S.W., CY-B402  
Washington, D.C. 20554  
qualexint@aol.com

  
Daniel Ladmirault

\* via email